

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	

**REPLY COMMENTS OF  
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

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Their Attorneys

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## SUMMARY

In these reply comments, the Nebraska Rural Independent Companies (“NRIC”) demonstrate that the record supports many of the policy positions upon which the NRIC-proposed framework and positions are based with respect to the transition from existing Rate of Return Carrier (“ROR Carrier”) Universal Service Fund (“USF”) mechanisms and the existing Connect America Fund (“CAF”) recovery to CAF-based mechanism for ROR Carriers in the short term (referenced as “ROR Carrier model-based CAF II”) as well for the yet-to-be-determined long term CAF mechanism. NRIC’s framework and the underlying policy objectives met through it are reasonable and in the public interest, and the framework should be adopted.

Therefore, NRIC suggests that the Wireline Competition Bureau (the “Bureau”) should use the following three (3) step process to establish the ROR Carrier model-based CAF II:

- (1) Developing specific identified constraints – tempering the “race-to-the-top” by adjusting all ROR Carriers’ support and providing for a partial waiver of the build out requirements in extreme cases.
- (2) Accomplishing the transition in a manner that provides for a predictable and transparent process subject to the requirements in Section 254 and Section 214 of the Communications Act of 1934, as amended (the “Act”) and using a “kick start” to provide the necessary funding to allow ROR Carriers the option of electing to receive ROR Carrier model-based CAF II support or continuing to received support based on the current mechanisms.
- (3) Convening the same type of “virtual workshop” that the Bureau conducted for the current Phase II PC Connect America Cost Model (“PC CACM”). The Bureau should publish periodic illustrative results from the workshop, which should focus on specific adjustments to the PC CACM that would improve precision to reflect the network deployment and operational costs and the other service-related characteristics of ROR Carriers.

Other commenters join NRIC in demonstrating that, before any increase in broadband speed standards is adopted by the Federal Communications Commission (the “Commission”), the Commission must first determine how recovery of the necessary network investment



supported by the federal USF/CAF programs will meet Congress's "sufficiency" requirement found in Sections 254(b)(5) and 254(e) of the Act. The proposed 10 Mbps downstream/1 Mbps upstream standard is a laudable goal, but cannot be achieved in a vacuum. It would be inappropriate to mandate an increased speed standard when the current standard is not universally available. To that end, while it does not take a position on the proposal at this time, NRIC also requests that the Commission require proponents of a reduction in Price Cap ("PC") Carrier service requirements where up to ten percent (10%) of an eligible location can remain unserved (the "*10% PC Proposal*") to demonstrate that the *10% PC Proposal* is proper and is in the public interest.

Finally, the record supports the conclusion that, with respect to the CAF funding process, both potential CAF recipients and competitors should be held to the same service standards and challengers to a funding grant should factually prove the services it provides should result in the ROR Carrier not receiving support. A challenger simply asserting allegations in lieu of actual proof is insufficient. In addition, the Commission should adopt NRIC's no re-look structure since it will encourage investment. Proposals such as biennial reviews should be rejected. Further, the record supports meaningful state commission input into the Eligible Telecommunications Carrier ("ETC") designation process, rejecting artificial time frames for state action that are not included in Section 214(e) of the Act while using the Act's defined process for relinquishing ETC status.

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**REPLY COMMENTS OF  
THE NEBRASKA RURAL INDEPENDENT COMPANIES**

The Nebraska Rural Independent Companies (“NRIC”)<sup>1</sup> hereby file these Reply Comments in response to those submissions made on August 8, 2014<sup>2</sup> regarding the issues raised in the “Further Notice of Proposed Rulemaking” portion of the action taken by the Federal Communications Commission (the “Commission” or the “FCC”) on June 10, 2014.<sup>3</sup>

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<sup>1</sup> The NRIC companies submitting these Reply Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco. Each of the NRIC companies is an interstate rate-of-return carrier (“ROR Carrier”).

<sup>2</sup> For convenience, references to the comments made in this proceeding will use the name of the party submitting the comments followed by the page reference.

<sup>3</sup> See *In the Matter of Connect America Fund, Universal Service Reform -- Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, Report and Order*,



**I. THE NRIC FRAMEWORK PROVIDES FOR A PROPER POLICY FOUNDATION FOR THE COMMISSION TO ESTABLISH NEW CAF MECHANISMS FOR ROR CARRIERS.**

**A. The NRIC Framework is Reasonable and in the Public Interest.**

In the NRIC Comments, NRIC demonstrated the reasonableness and public interest benefits associated with adoption by the Commission of NRIC's proposed framework for the transition from the existing High Cost Loop Support ("HLCS") and Interstate Common Line Support ("ICLS") mechanisms applicable to ROR Carriers to optional short-term Connect America Fund ("CAF") for ROR Carriers (referenced as "ROR Carrier model-based CAF II") and considerations that should form the basis for the not-yet-determined long-term CAF for such carriers (hereinafter referenced as "ROR Carrier forward-looking mechanism CAF III"). The foundation for NRIC's proposed framework was developed in a manner consistent with the Commission's existing policies regarding the federal Universal Service Fund ("USF") and the CAF for Price Cap ("PC") carriers ("PC Carriers") and is straightforward.

First and foremost, any such new program and its implementation must be consistent with the requirements of Section 254 of the Communications Act of 1934, as amended (the "Act"), and also must be based on the factual findings required by Section 254(b)(5) and Section 254(e) regarding sufficiency. Thus, with respect to the \$2 billion budget established by the Commission for ROR Carriers, NRIC demonstrated that any reserve account dollars should be added back to the funding for ROR Carriers so that their consumers can continue to enjoy the benefits

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*Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, FCC 14-54, released June 10, 2014 (the "FNPRM"). The issues raised in the FNPRM were published in the Federal Register on July 9, 2014. See 79 FR 39196 (July 9, 2014). Where decisional aspects of this Commission document are noted herein, the reference to those sections will be identified as the "7<sup>th</sup> Recon Order

associated with the level of existing broadband deployment within their area as well as additional funding for new broadband deployment to currently unserved or underserved consumers made available through the USF/CAF process.<sup>4</sup>

Second, NRIC's framework would provide the basis for increased investments in ROR Carriers' networks capable of providing high quality voice service and broadband access at the established 4 Mbps downstream/1 Mbps upstream speeds (the "4/1 M Existing Standard") while helping to avoid backsliding where consumers are receiving or are capable of receiving such broadband services.<sup>5</sup> This feature is consistent with NRIC's understanding of the objectives the Commission outlined in the *FNPRM* for a forward-looking ROR Carrier-focused CAF.<sup>6</sup>

Third, NRIC's framework provides a process whereby ROR Carriers can be as informed as possible as they elect the method by which they receive support during the transition to a new, stand-alone broadband funding mechanism for ROR Carriers.<sup>7</sup> This feature is consistent with the optionality that NRIC demonstrated was necessary during the transition to allow for the variance in operating and network characteristics of ROR Carriers.

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<sup>4</sup> See e.g., NRIC Comments at 7-9. As noted by NRIC, its reference to the ROR Carrier budget of \$2 billion in its comments was a combination of continued CAF Inter-carrier Compensation ("ICC") transition approximated at \$0.3 billion, with the remaining \$1.7 billion being made "available for HCLS and ICLS support if all ROR Carriers remained on those programs." *Id.* at 4, n.5. The same caveat applies to these reply comments.

<sup>5</sup> See e.g., *id.* at 5; see also *id.* at 2-3. The concept of "backsliding" would "occur where there is a reduction in the quality or availability of existing service to an end user by that end user's ROR Carrier arising from a lack of USF or CAF support for the location because the cost is above the alternative technology cutoff ("ATC")." *Id.* at 3, n.4.

<sup>6</sup> See *FNPRM* at ¶ 269 (proposing that the new ROR mechanism meet various requirements including distribution of "support based on forward-looking costs (rather than embedded costs). . .").

<sup>7</sup> See, e.g., NRIC Comments at 3, 23, 28, 62.



Fourth, as part of the transition to the new CAF-related mechanisms,<sup>8</sup> the NRIC framework would foster consistent treatment of broadband providers by holding any entity involved in the USF/CAF-related disbursement process (including the challenge process)<sup>9</sup> to the same, factually demonstrated level of service that is applicable to the PC Carriers arising from the Commission's October 31, 2013 *PC Carrier Standards Order*.<sup>10</sup> This latter requirement, in turn, will afford the Commission the ability to conduct a data-driven "apples-to-apples" comparison when it decides how to distribute the current ROR Carrier budget of \$2 billion.

As with any effort to develop and implement a new mechanism as well as a transition to such new mechanism, NRIC recognizes the need for a foundation so that the Commission can move forward to establish a properly tailored ROR Carrier-based system. Accordingly, NRIC noted that its support of the optionality, in the short-term, for ROR Carriers to select model-based CAF II support or frozen current support was conditioned on a set of baseline presumptions:

- (1) The Commission plans to use the current PC CACM as a baseline from which a ROR Carrier model-based CAF II can be developed, modifying the PC CACM to reflect ROR Carrier characteristics and running any such ROR Carrier model-based CAF II for ROR Carriers utilizing the entire \$2 billion ROR budget;<sup>11</sup>

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<sup>8</sup> See *id.* at 41-54.

<sup>9</sup> While disbursements of CAF could lawfully only be made to Eligible Telecommunications Carriers ("ETCs") (see 47 U.S.C. §§ 214(e) and 254(e)), other non-ETCs could be involved in the challenge process.

<sup>10</sup> See *In the Matter of the Connect America Fund, Report and Order*, WC Docket No. 10-90, DA 13-2115, released October 31, 2013 (the "*PC Carrier Standards Order*").

<sup>11</sup> See NRIC Comments at 4, 6-10.



- (2) The revenue funding threshold applied to ROR Carriers in the ROR Carrier model-based CAF II is no less than the preliminary \$52.50 established by the Commission for PC Carriers under the PC CACM;<sup>12</sup>
- (3) The ATC is calculated by utilizing the entire \$2 billion ROR Carrier budget;<sup>13</sup>
- (4) The ROR Carrier model-based CAF II cost module develops a network providing broadband speeds set at the current speeds – one 4 Mbps downstream/1 Mbps upstream – notwithstanding proposals to increase these speeds as reflected in the *FNRPM* (the latter of which – increasing the speed thresholds – should not be made at this time for the reasons stated in the NRIC Comments);<sup>14</sup>
- (5) Qualified competitors must meet performance standards as outlined in the NRIC Comments<sup>15</sup> and must serve 100 percent (100%) of the customer locations in a ROR Carrier's census block(s) in order to successfully challenge a ROR Carrier's award of either short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support in the affected census block;
- (6) All "In-Town" census blocks are presumed not to be eligible for short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support based on the presumption as explained in the NRIC Comments that "In-Town" areas are competitive or, alternatively, are areas where a business case can be made for deployment;<sup>16</sup>
- (7) All other ROR census blocks are presumed to be non-competitive unless found otherwise through a competitor's challenge that demonstrates that it meets the coverage and service standards described above and discussed in more detail in the NRIC Comments;<sup>17</sup>

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<sup>12</sup> See e.g., *In the Matter Connect America Fund, High-Cost Universal Service Support, Report and Order*, WC Docket Nos. 10-90, 05-337, DA 14-534, released April 22, 2014 at ¶¶ 180-181; see also NRIC Comments at 4.

<sup>13</sup> See *id.*

<sup>14</sup> See *id.* at 4; see generally *id.* at 56-62.

<sup>15</sup> See *id.* at 4, 42-46.

<sup>16</sup> See *id.* at 4, 48-50.

<sup>17</sup> See *id.* at 4-5, 50-54.

- (8) A competitor has the burden of filing a challenge and providing evidence that it meets the coverage and service standards within a ROR Carrier census block;<sup>18</sup> and
- (9) Any challenge to the recovery for a ROR Carrier from either ROR Carrier model-based CAF II or the yet-to-be-determined ROR Carrier forward-looking mechanism CAF III shall be a one-time event without a re-look during the period of the useful life for the facilities being used by the ROR Carrier for the services it provides.<sup>19</sup>

Moreover, NRIC noted that these baseline presumptions are consistent with the Commission's statement that "'classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund.'"<sup>20</sup>

**B. NRIC is Encouraged that Contribution Reform is Moving Forward as it is A Fundamental Linchpin to the Development of the ROR Carrier-based Mechanisms Arising from the FNPRM.**

A sustainable and viable foundation for any and all ROR Carrier support mechanisms is absolutely essential, not only to meet the objectives of the universal service provisions of the Act, but also to provide the assurance that ROR Carrier model-based CAF II support and any new, yet-to-determined ROR Carrier forward-looking mechanism CAF III support have a sustainable and sufficient contribution base.<sup>21</sup> NRIC is encouraged that the Commission has referred the issue of contribution reform to the Federal/State Joint Board.<sup>22</sup> The timing of action

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<sup>18</sup> See *id.* at 5, 54.

<sup>19</sup> NRIC Comments at 5, 54-56.

<sup>20</sup> *Id.* at 5 quoting 7<sup>th</sup> *Recon Order* at ¶ 71.

<sup>21</sup> See NRIC Comments at 6-7.

<sup>22</sup> See generally *In the Matter of Federal State Joint Board on Universal Service, Universal Service Contribution Methodology, A National Broadband Plan For Our Future, Order*, WC Docket Nos. 96-45, 06-122, GN Docket No. 09-51, FCC 14-116, released August 7, 2014 ("USF Contribution Reform Referral").



by the Joint Board – by no later than April 7, 2015<sup>23</sup> - may very well provide the foundation for addressing how a sustainable ROR Carrier support program can be implemented. Accordingly, NRIC respectfully requests that the Commission take prompt action on the Joint Board recommendations made in response to the *USF Contribution Reform Referral*. NRIC also respectfully submits that it is critical that the Commission’s action on the Joint Board recommendation recognizes the need for states with universal service programs to be able to maintain and shore up their respective contributions base.

**C. Common Ground Exists for the Adoption of the Optional Model-Based CAF II or Frozen Current Support for ROR Carriers, Steps Upon which the NRIC Proposed Framework is Based.**

Based on its review of the comments, NRIC respectfully submits that common ground exists for the Commission to proceed to develop the ROR Carrier model-based CAF II and the yet-to-be-determined ROR Carrier forward-looking mechanism CAF III, as NRIC envisions it. Therefore, NRIC suggests that the Wireline Competition Bureau (“Bureau”) should use the following three (3) step process to establish the ROR Carrier model-based CAF II:

- (1) Developing specific identified constraints – tempering the “race-to-the-top” by adjusting all ROR Carriers’ support and providing for a partial waiver of the build out requirements in extreme cases.<sup>24</sup>
- (2) Accomplishing the transition in a manner that provides for a predictable and transparent process subject to the Act’s Section 254 and Section 214 requirements and using a “kick start” to provide the necessary funding to allow ROR Carriers the option of electing to receive ROR Carrier model-based CAF II support or continuing to received support based on the current mechanisms.<sup>25</sup>

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<sup>23</sup> See *id.* at ¶¶ 1, 5.

<sup>24</sup> See NRIC Comments at 17-21.

<sup>25</sup> See *id.* at 21-27.

- (3) Convening the same type of “virtual workshop” that the Bureau conducted for the current Phase II PC Connect America Cost Model (“PC CACM”). The Bureau should publish periodic illustrative results from the workshop, which should focus on specific adjustments to the PC CACM that would improve precision to reflect the network deployment and operational costs and the other service-related characteristics of ROR Carriers.<sup>26</sup>

Not surprisingly, the overall concept of optionality for ROR Carriers was supported by commenters.<sup>27</sup> While NRIC remains concerned over the sufficiency of the budget,<sup>28</sup> NRIC is encouraged that there is recognition that the ROR budget could be supplemented by reserve

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<sup>26</sup> See *id.* at 27-35.

<sup>27</sup> See e.g., Independent Telephone & Telecommunications Alliance (“ITTA”) Comments at 25-27; National Telecommunications Cooperative Association (“NTCA”) Comments at 65-66; Washington Independent Telecommunications Association, Colorado Telecommunications Association, Nevada Telecommunications Association, Oklahoma Telecommunications Association, Oregon Telecommunications Association (collectively “WITA *et al.*”) Comments at 12.

<sup>28</sup> In this regard, NRIC notes that the Alaska Rural Coalition (“ARC”) raises some very practical middle mile issues that may also be raised to some extent in other areas of the country. See ARC Comments at 3-5. NRIC recognizes that middle mile continues to be an important issue and its treatment remains uncertain based on the Commission’s Further Notice of Proposed Rulemaking (“USF/ICC FNPRM”) arising from the USF/ICC Transformation Order. See *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161, 26 FCC Rcd 17663 (2011) (“USF/ICC Transformation Order”) at ¶ 1035 (the Commission sought comment “...on the benefits and the costs of providing support for ‘middle mile’ facilities and access to the Internet backbone ...[and,] [o]n average for small carriers, approximately what proportion of the costs to deploy broadband networks and provide broadband services are attributable to middle mile and Internet backbone costs today?”). Thus, the middle mile cost issues identified by ARC and identified in the USF/ICC FNPRM still need to be addressed for all providers that build middle mile facilities or rely on the purchase of middle mile transport from other providers. The need to address these issues for all ROR Carriers is particularly appropriate in light of the current constrained \$2 billion ROR budget and the upward pressure on middle mile costs if the Commission adopts the increased standard of 10 Mbps downstream/1 Mbps upstream (the “10/1 M Proposed Standard”) as well as with respect to how the Commission resolves the issues regarding the continued transition to Internet Protocol-based networks including, for example, transport obligations and the responsibility and cost for it.



account dollars.<sup>29</sup> Consistent with NRIC's observations regarding the need for a predictable basis from which a ROR Carrier will make investments to meet the universal service and broadband requirements of the Commission,<sup>30</sup> other parties recognized the need for financial certainty to encourage capital investments<sup>31</sup> as well as the need for a process that encourages informed decision making,<sup>32</sup> each of these recognitions also being consistent with NRIC's observations as stated in the NRIC Comments.<sup>33</sup>

While some commenters did offer general statements of concern over the development of a ROR Carrier-based model,<sup>34</sup> NRIC respectfully submits that any changes to the PC CACM for support under ROR Carrier model-based CAF II need to be transparent<sup>35</sup> and need to produce support amounts that are sufficient,<sup>36</sup> while meeting the Commission goal of distributing support based on forward-looking costs.<sup>37</sup> However, that does not mean that modifications to the model inputs and cost modules cannot be made to improve the precision of the results.<sup>38</sup> The Bureau

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<sup>29</sup> See ITTA Comments at 29-30; *see also* NRIC Comments at 8-9. Under this proposal, NRIC notes that the amount for distribution would be determined using the following equation:

$$\begin{aligned} &\text{Amount to be distributed by Model + Frozen Support} \\ &= \$2 \text{ billion ROR Budget + Reserve Account Dollars - CAF ICC Distributions.} \end{aligned}$$

<sup>30</sup> See *e.g.*, NRIC Comments at 36-37.

<sup>31</sup> See *e.g.*, WITA *et al.* Comments at 4.

<sup>32</sup> See *id.* at 9-10.

<sup>33</sup> See, *e.g.*, NRIC Comments at 2, 3, 23, 28, 36-37.

<sup>34</sup> See *e.g.*, Alexicon Consulting ("Alexicon") Comments at 6-7.

<sup>35</sup> See NRIC Comments at 27-28.

<sup>36</sup> See *e.g.*, *id.* at 7-8.

<sup>37</sup> See FNPRM at ¶ 269.

<sup>38</sup> See ITTA Comments at 30-31 (use of study areas boundary data), 33-34; *see also* NRIC Comments at 30, 32-33.

can foster this type of constructive dialogue by accepting NRIC's suggestion to establish a virtual workshop on the model and by issuing illustrative runs.<sup>39</sup>

**II. ONLY AFTER ENSURING THAT BROADBAND AT EXISTING SPEEDS IS ADEQUATELY FUNDED SHOULD THE BROADBAND SPEED STANDARD BE INCREASED AND THEN ONLY IF ADEQUATE FUNDING EXISTS FOR THE HIGHER SPEED.**

NRIC recognizes that adoption by the Commission of the 10/1 M Proposed Standard is a laudable goal.<sup>40</sup> Nonetheless, that goal cannot be achieved in a vacuum.<sup>41</sup>

In addition, NRIC submitted that it would be inappropriate to mandate the 10/1 M Proposed Standard when the current 4/1 M Existing Standard is not universally available.<sup>42</sup> Not surprisingly, these same positions were also shared by other commenters.

For example, the ARC noted concerns that mandating a 10/1 M Proposed Standard might create a greater "digital divide" in those areas where meeting the current 4/1 M Existing Standard has not been achieved.<sup>43</sup> So too, other rural ROR Carrier-related commenters noted that commensurate funding would be needed for any increase in speed,<sup>44</sup> a need that is especially

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<sup>39</sup> *See id.* at 34-35.

<sup>40</sup> *Id.* at 56.

<sup>41</sup> Thus, while the benefits of greater broadband speeds may create the very benefits that other commenters suggest (*see* Utilities Telecom Council ("UTC") Comments at 8-12; BARC Electric Cooperative Comments at 5-6), no demonstration has been made as to how the networks meeting these standards would be paid for. Allegations that the increase in costs for networks would be "marginal" (UTC Comments at 12) without real-world facts to support such allegations must be disregarded. So too, self-serving contentions regarding CAF recipients being held to the new standards but alleged competitors offering less than that standard can still be the basis for precluding support (*see* Wireless Information Service Providers Association ("WISPA") Comments at 6), should also be disregarded.

<sup>42</sup> *See* NRIC Comments at 57.

<sup>43</sup> *See* ARC Comments at 10-11; *see also* The Concerned Rural Carriers Comments at 10.

<sup>44</sup> *See* Alexicon Comments at 2; GVNW, Inc. Comments at 13-14.



important where there is an increase in “additional equipment and fiber” is required or where “existing technology is simply not capable of meeting some new requirements, and would require wholesale replacement of network elements at great costs”,<sup>45</sup> while others noted that the Commission cannot continue to increase broadband speeds that require greater investment without increasing support.<sup>46</sup> ROR Carrier groups were not alone in stating these positions. State Commission commenters noted that, while comparability between rural and urban areas may require increases in broadband speed, mandating such speed increases will increase costs and complexity.<sup>47</sup>

Ultimately, NRIC respectfully submits that the broadband speed issue must be addressed based on financial analysis. The Commission should estimate the cost to provide broadband at the 10/1 M Proposed Standard, compared to the 4/1 M Existing Standard. Based on these factually-driven determinations, the Commission should explain how the current ROR budget for ROR Carriers and how the current PC budget for PC Carriers can achieve recovery of the network capital costs and the on-going operating costs required to meet these two standards.<sup>48</sup> In the absence of such findings, no basis exists to conclude that a sufficient USF/CAF exists to implement a 10/1 M Proposed Standard.<sup>49</sup>

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<sup>45</sup> See Blooston Rural Carriers Group Comments at 2.

<sup>46</sup> See WITA *et al.* Comments 5-6.

<sup>47</sup> See Missouri Public Service Commission (“Mo PSC”) Comments at 2; *see also* Utah Public Service Commission (“UT PSC”) Comments at 1 (recognition of increased costs in meeting increased speed standard).

<sup>48</sup> See NRIC Comments at 57-58.

<sup>49</sup> See 47 U.S.C. §§ 254(b)(5), 254(e). NRIC agrees with the need to make findings that ensure that the ROR budget is sufficient to fund the requirements that the Commission may establish. *See generally* The Concerned Rural Carriers Comments at 16. That is why NRIC specifically noted “that the Commission should independently evaluate and ensure that the support

**III. ACTION ON THE PC CARRIER PROPOSAL TO REDUCE THE AREAS THEY WOULD SERVE BY UP TO TEN PERCENT IS PREMATURE AND SHOULD NOT PROCEED ABSENT DEMONSTRATION THAT IMPLEMENTATION WOULD BE IN COMPLIANCE WITH SECTION 254 OF THE ACT.**

The PC Carriers and United States Telecom Association (“USTA”) propose:<sup>50</sup> (1) reducing by up to 10% the locations that the PC Carrier must serve within each state; and (2) allowing any such carrier to either (a) return to USAC an equal percentage of the PC CACM-determined funding that the PC Carrier would receive over eight to ten years<sup>51</sup> or (b) use these dollars in other partially served census blocks (“CBs”) (collectively the “10% PC Proposal”).<sup>52</sup> Further, AT&T suggests that satellite providers could be eligible to participate in any unclaimed dollars as well.<sup>53</sup>

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mechanisms arising from resolving the *FNPRM* issues are sufficient as required by Section 254(b)(5) and Section 254(e)” of the Act.” NRIC Comments at 7. This finding is a prerequisite in order to ensure that the mechanisms to be established meet Congress’ universal service directives contained within the Act.

<sup>50</sup> It is not entirely clear whether the Commission’s discussion of “Flexibility in Meeting Deployment Obligations” (*see FNPRM* at ¶¶ 162 – 172) is premised upon the 4/1 M Existing Standard or upon the 10/1 M Proposed Standard. It appears that at least USTA’s discussion of the subject of deployment flexibility includes the context of the 10/1 M Proposed Standard. *See* USTA Comments at 15 (“CAF Phase II recipients are entering into an ambitious agreement to extend broadband service (*potentially at 10 Mbps downstream*) to the challenging areas of rural America not currently served by broadband that meets even the 3 Mbps downstream/768 kbps upstream standard.” (emphasis added)). NRIC’s discussion in this section of these Reply Comments is based upon the assumption that the *10% PC Proposal* applies to both the 4/1 M Existing Standard and the 10/1 M Proposed Standard.

<sup>51</sup> As NRIC understands the PC Carrier proposal, the returned funds would be based upon a proportional calculation so that, for example, a carrier electing to not serve 8% of its locations would be denied 8% of its support over the period.

<sup>52</sup> *See e.g.*, AT&T Comments at 43-46; CenturyLink Comments at 14, 18-19; Windstream Comments at 5-6; USTA Comments at 13-15.

<sup>53</sup> *See* AT&T Comments at 25 and n.71, 48.



While NRIC does not take a position on the proposal suggested by the various PC Carriers at this time, NRIC respectfully submits that, based on the limited factual and policy support and legal basis for this *10% PC Proposal*, neither the Commission nor other parties are in a position to evaluate whether the *10% PC Proposal* is proper and otherwise serves the public interest. In particular, NRIC respectfully submits that the PC Carriers and USTA have not, as yet, explained how the *10% PC Proposal* can be found to: 1) be consistent with the requirements of Section 254 of the Act regarding sufficiency;<sup>54</sup> 2) enable all rural consumers to have comparable service and rates for those service provided in urban areas;<sup>55</sup> 3) establish a transparent, fact-based process upon which changes to the existing USF/CAF mechanisms are to

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<sup>54</sup> See 47 U.S.C. § 254(b)(5) and 254(e).

<sup>55</sup> In Section 254(b)(3), Congress directed that

[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

47 U.S.C. § 254(b)(3). In Section 254(b)(5), Congress directed that there should be “specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.” 47 U.S.C. § 254(b)(5). And, in Section 254(e), Congress declared that

After the date on which Commission regulations implementing this section take effect, only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. *Any such support should be explicit and sufficient to achieve the purposes of this section.*

47 U.S.C. § 254(e) (emphasis added).

be based;<sup>56</sup> 4) be compatible with the right of first refusal, state-wide commitment rule that the Commission applied to PC Carriers in the *USF/ICC Transformation Order*;<sup>57</sup> and 5) be a reasonable calculation of the amount of support to be eliminated given NRIC's experience that costs to serve various locations within a service territory can vary greatly. Finally, the *10% PC Proposal* proponents have not explained what kinds of voice and broadband service will be available in the areas where the PC Carriers elect to leave locations unserved.

Accordingly, NRIC respectfully suggests that it is reasonable for the Bureau to require the PC Carriers to provide the data that demonstrates the PC CACM results of the *10% PC Proposal*, which would then be publicly available to interested parties. To make this data as useful as possible, the PC Carriers should also be directed to provide responses to the following items in order to establish the legal and public policy bases that the PC Carriers offer as support for the *10% PC Proposal*:

- (1) Because the proposed percentage of dollars that would be returned or used in other locations is the same as the percentage of locations that would not be served, an explanation of the factual basis for the apparent underlying premise of the *10% PC Proposal* that the cost to serve all locations within the CB is the same, *i.e.*, is linear;

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<sup>56</sup> Transparency of decision-making has been an objective of the FCC. As noted for example by the FCC in the *USF/ICC Transformation Order* when discussing the submission by ETCs of certain financial information, the Commission stated the following:

Likewise, we conclude at this time it is not necessary to require the filing of such information by recipients of funding determined through a forward-looking cost model or through a competitive bidding process, even if those recipients are privately held. We expect that a model developed through a transparent and rigorous process will produce support levels that are sufficient but not excessive, and that support awarded through competitive processes will be disciplined by market forces. The design of those mechanisms should drive support to efficient levels.

*USF/ICC Transformation Order* at ¶ 596.

<sup>57</sup> See 47 C.F.R. § 54.310(b).



- (2) In the absence of a justified factual determination with respect to the linear relationship between the cost to serve locations and a pro-rata reduction in PC CACM disbursements, a factual demonstration that the disbursements from the PC CACM will not result in “more-than-sufficient” CAF funding to the “at-least 90% of locations” that would be served or in those locations in other CBs should that be permitted;
- (3) An explanation as to why support, combined with a longer permitted build out period for up to 10% of locations in the study area would not be sufficient to construct and operate the necessary facilities in those locations;
- (4) The limitations, if any, that would apply to a PC Carrier that wishes to identify unserved locations, *i.e.*, would the decision be left solely to the PC Carrier.
- (5) The public policy and factual bases for allowing the flexibility that is being sought under the *10% PC Proposal*, including, by way of example only, how the *10% PC Proposal* complies with the reasonably comparable service and pricing standards under Section 254(b)(3) of the Act and the sufficiency requirements of the Act found in Sections 254(b)(5) and 254(e);
- (6) The legal basis for allowing a carrier to elect to serve less than the full CB based on the “right of first refusal” statewide commitment standard established by the Commission in its rules;<sup>58</sup> and
- (7) An explanation as to what broadband would be made available in the areas with permitted unserved locations should the *10% PC Proposal* be adopted by the Commission.

The responses from the PC Carriers to these questions, coupled with the data described above will allow interested parties to more fully evaluate whether the *10% PC Proposal* is in the public interest, is consistent with the requirements of Section 254 of the Act and is adequately and appropriately based on facts. In the absence of the information requested herein being provided by the PC Carriers, NRIC respectfully submits that there would be no proper and transparent record basis for the Commission to consider or implement the *10% PC Proposal*.

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<sup>58</sup> See generally 47 C.F.R. §§ 54.310.

**IV. ALL ENTITIES WITHIN THE CHALLENGE PROCESS MUST BE HELD TO THE SAME COVERAGE AND SERVICE STANDARDS; TO DO OTHERWISE WOULD RUN THE RISK OF BACKSLIDING CONTRARY TO THE UNIVERSAL SERVICE OBJECTIVES OF THE ACT.**

NRIC has already demonstrated the need for Commission-specific rules and policies that hold all entities within the CAF funding process – both potential CAF recipients and competitors – to the same service standards established in the *PC Carrier Standards Order*.<sup>59</sup> To achieve this result, the challenge process must be fact-based and an entity's ability to offer service that meets the *PC Carrier Standards Order* requirements must be factually demonstrated. Absent these requirements, NRIC is properly concerned that areas where USF/CAF funding is required will be left unsupported,<sup>60</sup> and consumers in those areas may not have reasonably comparable services.<sup>61</sup> For those ROR Carriers committed to ROR Carrier model-based CAF II or once the ROR Carrier forward-looking mechanism CAF III is in place, NRIC also demonstrated that to encourage investment in these ROR Carriers' respective service areas, a no re-look policy should be put in place.<sup>62</sup>

The record supports many of the underlying policies upon which NRIC's positions are based. For example, requirements should be put in place to ensure that alleged competitors are, in fact, providing comparable service such as those established in the *PC Carrier Standards*

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<sup>59</sup> See e.g., NRIC Comments at 43-46, 54.

<sup>60</sup> See *id.* at 51-54.

<sup>61</sup> See e.g., ARC Comments at 5-6 (opposes satellite and wireless carriers being eligible for ROR Carrier support as such a decision does not support the need to deploy fiber); Windstream Comments at 7-8; Midwest Energy Cooperative Comments at 11.

<sup>62</sup> See *id.* at 54-56.



*Order*.<sup>63</sup> Moreover, the alleged competitor should prove the services it provides should result in the ROR Carrier not receiving support rather than simply asserting allegations in lieu of actual proof.<sup>64</sup>

With respect to NRIC's suggested no re-look policy, the National Cable & Telecommunications Association ("NCTA") requests a biennial review of the status of competition within a ROR Carrier service area.<sup>65</sup> However, NCTA has not reconciled its position with what the record demonstrates should be avoided – namely, creating a chilling effect on investment in broadband by ROR Carriers that select ROR Carrier model-based CAF II and the yet-to-be determined ROR Carrier forward-looking mechanism CAF III<sup>66</sup> since it is that

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<sup>63</sup> See e.g., NTCA Comments at 40-41 (unsubsidized competitors should be held accountable to compliance with speed and other criteria for anchor institutions); USTA Comments at 53-55 (arguing for clear standards with respect to 100% overlap); CenturyLink Comments at 12 (unsubsidized competitors must meet the same speed criteria); Windstream Comments at 6 (competitive bidders should have same usage allowances and latency benchmarks as PC Carriers); UTC Comments at 13-14 (apply same usage allowances and latency benchmarks in competitive bidding process applicable to PC Carriers).

<sup>64</sup> See e.g., GVNW Comments at 10 (specific service information by such an entity must be provided); TCA Comments at 6 (burden should be on the alleged competitor to prove the services it provides); ITTA Comments at 31-33 (care must be taken to avoid overstatement of an entity's claim of providing service); NTCA Comments at 45-46 (the burden to demonstrate service overlap should be on the third party entrant not the ROR Carrier); USTA Comments at 55-56 (the alleged competitor should have the burden of proving the 100% overlap); MO PSC Comments at 4 (the challenge process must be rigorous and require evidence that the service is offered and available before an area is deemed ineligible for support); UT PSC Comments at 1 (the Commission's process should review actual results not just claims by competitors that can be overstated (such as in the case of wireless providers)); Utah Governor's Office of Economic Development Comments at 3 (the Commission should establish an objective mechanism for verifying whether competitive services exists and should work with the states to employ such mechanism)

<sup>65</sup> See NCTA Comments at 2.

<sup>66</sup> See NRIC Comments at 54-56.

investment which will help achieve the Commission's objective of encouraging broadband deployment in rural areas.<sup>67</sup>

Finally, NRIC agrees with the need for a continuing, meaningful state commission role in the ETC process. The designation process and ongoing oversight by state commissions on ETC status is a necessity. The Commission should reject artificial time frames for completion of state commission action on ETC designations<sup>68</sup> since no such timeframes have been established by Congress as to when such ETC designations are to be made. Consistent with NRIC's position, the California PUC also agrees that the Act provides a process for relinquishing ETC status and that process should be followed.<sup>69</sup>

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<sup>67</sup> See e.g., The Concerned Rural Carriers Comments at 3-4.

<sup>68</sup> See e.g., California Public Utilities Commission ("California PUC") Comments at 9; *see also* NTCA Comments at 61-62.

<sup>69</sup> See California PUC Comments at 9; *see also* NRIC Comments at 26-27.



## V. CONCLUSION

For the reasons stated herein, NRIC respectfully requests that the Commission accept and confirm the baseline presumptions that NRIC noted above and in the NRIC Comments, and, adopt the proposals contained in the NRIC Comments and herein.

Dated: September 8, 2014.

Respectfully submitted,

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